

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8255 of 1997

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DHIRAJLAL HIRJIVA VAYADA

Versus

STATE OF GUJARAT  
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Appearance:

MR VH DESAI for Petitioner  
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CORAM : MR.JUSTICE S.D.PANDIT

Date of Order: 05/12/97

ORAL ORDER

Dhirajlal Harjilal Vayada has filed the present petition challenging the order passed by the respondent no.1 in Revision Application no. 31 of 1996 on 21st June, 1997. The present petitioner is the neighbour of respondent no. 4 Kanuben Ratansinh Shah and both the petitioner and respondent no. 4 are residing within municipal area of Bhuj Nagarpalika. The respondent no. 4 is having her old house in her property and she had sought permission of the Nagarpalika to pull down the old building and raise a new construction as per plans and estimates submitted by her. The said plans were approved by the municipality and necessary permission to raise construction was granted by the Nagarpalika. Thereafter, respondent no. 4 started raising construction in the same and it seems that the present petitioner felt that by the said construction, there is an encroachment on his easementary right by the respondent no. 4. He therefore, raised obstruction to the respondent no. 4 in completing the said construction. The respondent no. 4 then filed Regular Civil Suit No. 422 of 1995 in the Court of the learned Civil Judge (J.D.), Bhuj and that proceeding is pending between the parties in the Civil Court. But inspite of the said proceedings before Civil Court, the present petitioner approached the Collector of Bhuj by giving an application purporting to be an application under section 258 of the Gujarat Municipalities Act, 1963. In the said

application, the present petitioner has joined Bhuj Nagarpalika as opponent no. 1 and respondent no. 4 Kanuben as opponent no. 2. The Collector was pleased to issue notice to both the opponents. The opponents opposed the claim of the present petitioner by contending that there was no reason to take action under section 258 and the construction carried out by the opponent no. 4 was according to law. Bhuj Municipality has contended that there was some deviation by respondent no. 4 in making the use of the permission granted by the Bhuj Nagarpalika and they have carried out certain construction beyond plans and estimates as supplied by the respondent no. 4. Therefore, the Nagarpalika had issued notice to remove the said additional construction and had also taken steps of prosecuting the respondent no. 4 for breach of municipal permission. After hearing both the sides, the Collector passed an order under section 258 of the Act on 8th August, 1996 which runs as under:

"In view of the aforesaid discussion as also the oral arguments made by all the parties at the time of hearing of this case, as it appears that the permission granted by the Bhuj Nagarpalika is against the rules of construction, following order is hereby passed.

That since the permission granted by Bhuj Nagarpalika vide its letter no.BNP/Eng/476/94-95 dated 6.5.95 to Kanuben Ratanshi Shah, resident of Bhuj for making constructions appears to be against the provisions of the sub-rules, the same is hereby held as illegal and as a reason of the said permission being held as illegal, the Bhuj Nagarpalika is hereby ordered to bring back the construction in its original status which existed prior to grant of the said permission."

Being aggrieved by the said decision, the respondent no. 4 had preferred a Revision Application of the Collector before respondent no. 4 and the respondent no.1 was pleased to allow the said Revision Application by passing the following order.

"The order dated 8.8.96 passed by the Collector, Bhuj is hereby quashed/set aside. Simultaneously it is also ordered that the construction work by the Nagarpalika should be done following the provisions of the rules and bye-laws of Nagarpalika and should accordingly be changed/altered."

2. Being aggrieved by the said decision, the petitioner has come before this Court. It is vehemently contended by the learned advocate Mr. Mehta for the petitioner that the respondent no.1 was not at all justified in interfering with the order passed by the Collector of Bhuj. I have quoted the above order passed by the Collector of Bhuj. If the said order of the Collector is considered then it would be quite clear that the Collector has not come to a positive conclusion that there is a breach of permission granted by the municipality in favour of the respondent no. 4. The order of the Collector is totally vague. The learned advocate for the petitioner pointed out that from the order of the Collector to show that the Collector has come to the conclusion that there is a breach of a particular rule in granting the said permission by Bhuj Nagarpalika. The Collector has nowhere observed in his order that the permission granted by the Nagarpalika is likely to cause injury or annoyance to the public at large. If the provisions of section 258 of Gujarat Municipality Act, 1963 is seen, then it would be quite clear that the Collector is empowered to interfere with the order or resolution of the Nagarpalika only in case it is likely to cause annoyance to the public or leads to a breach of peace or is unlawful. If the order of the Collector is seen, then it would be quite clear that the Collector has not recorded any finding to mention that the permission granted by Bhuj Nagarpalika was unlawful or it was likely to cause injury or annoyance to public or lead to breach of peace. If the provisions of section 258 of Gujarat Municipalities Act are considered, then it would be quite clear that the Collector is empowered to interfere with the order or resolution of Nagarpalika only in case if he happens to come to any of these four conclusions. Unless he records a finding to that effect, he has no jurisdiction to exercise powers under section 258 of the Gujarat Municipalities Act.

3. It seems that the main grievance of the present petition is regarding encroachment on his easementary right to light and air on account of construction carried out by the respondent no. 4. But to get redressal of the said grievance, proper forum is to approach the Civil Court and not to have recourse of section 258 of the Act. As a matter of fact, the parties have approached the Civil Court by filing a Regular Civil Suit. Only on that count alone, the Collector ought not to have entertained the original complaint of the present petitioner.

4. Now, apart from this, if the order of the Collector is seen, then it would be quite clear that Bhuj Nagarpalika had fairly placed all the material before the Collector and they had informed the Collector that there are certain deviations by the respondent no. 4 and the respondent no. 4 and respondent no. 4 had carried out certain construction beyond permission granted to the respondent no. 4 and they have already taken action against respondent no. 4 for the said breach committed by the respondent no. 4. Now, when the Municipality has already acted and has already taken action to remove illegalities, interference at the hands of the Collector under section 258 is not at all called for. The Collector can interfere only if there is a failure on the part of the municipality to perform its duty, but when the Municipality has already performed its duty, the interference by the Collector is not at all justified. What the respondent no. 1 has stated is that if there is a breach of permission granted by the Nagarpalika, then it is for the municipality to take action against the respondent no. 4. Consequently, the respondent no. 1 was quite justified in quashing and setting aside the order passed by the Collector.

5. Thus, the order passed by the respondent no.1 could not be said to be either perverse or capricious or illegal so as to consider the same by exercising powers either under Article 226 or 227 of the Constitution of India. In these circumstances the petition is summarily rejected.

(S.D.Pandit,J)

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